

# NEW YORK CITY

## MOTOR VEHICLE

### Pedestrian

# Girl sustained femur fracture in hit-and-run accident

#### SETTLEMENT

**\$2,000,000**

#### CASE

Anesha Cain, an Infant Under the Age of 14 Years, by Her Mother and Natural Guardian, Lucia Cain, and Lucia Cain, Individually v. Edwin Amaro, Dan Klores Assoc. Inc., and "John Doe," the Entire Name Being Fictitious, the True Name Being Unknown to the Plaintiff, it Being Intended to Designate the Driver of the Hereinafter Described Motor Vehicle, No. 24803/98

#### COURT

Kings Supreme

#### JUDGE

Kathryn M. Smith

#### DATE

11/10/2003

#### PLAINTIFF

#### ATTORNEY(S)

Kenneth A. Wilhelm, New York, NY

#### DEFENSE

#### ATTORNEY(S)

William J. Ryan Jr., Shelton, CT, trial counsel to Caulfield & Associates, New York, NY

**FACTS & ALLEGATIONS** At approximately 7:45 p.m. on May 18, 1998, infant plaintiff Anesha Cain, 6, was struck by a motor vehicle at 167 Chestnut St., near her home in the East New York section of Brooklyn. The driver fled the accident scene without stopping. A witness identified the car as a Mercedes Benz that belonged to Dan Klores Associates Inc.

Cain's mother and natural guardian, Lucia Cain, acting individually and on behalf of her daughter, sued Dan Klores Associates and one of its employees, Edwin Amaro. The suit also named a "John Doe" defendant designated as the driver of the car involved in the accident, though the Cains subsequently alleged that Amaro was driving the car at the time of the accident.

The defendants denied that their vehicle had been involved in the accident. Amaro claimed that he was not in the vicinity of East New York at the time of the accident. He contended that he was using the car to pick up a co-worker at John F. Kennedy International Airport in Queens.

The defendants produced records that showed that the car's driver had paid a toll on a New York bridge shortly after the accident. They argued that Amaro had driven from the airport to the Triboro Bridge, and thus, that he could not have been involved in the accident. The Cains attempted to prove oth-

erwise by presenting a videotape that timed a car traveling on Amaro's claimed route. They argued that Amaro would have had time to be at Chestnut Street at the time of the accident.

*Editor's note:* Judge Gloria C. Aronin initially dismissed this matter because the Cains had not presented proof of liability. On appeal, the Appellate Division, Second Department, found that issues of fact existed regarding liability, and it ordered a new trial.

**INJURIES/DAMAGES** *cognitive deficit; fracture, femur; hemothorax; liver, laceration; loss of services; scar and/or disfigurement, leg; ventriculostomy*

Anesha Cain claimed to have sustained a fractured right femur, a liver laceration, head trauma, a hemothorax, and scars on her outer right thigh. She underwent a ventriculostomy to treat her head trauma, and open reduction and internal fixation of her femur fracture. She also claimed that the head trauma had resulted in cognitive and other deficits.

Lucia Cain claimed loss of services.

The Cains' damages were not before the jury in this bifurcated trial on liability. In the previous trial, the defendants challenged the claimed severity of Anesha Cain's injuries.

**RESULT** The parties reached a \$2 million settlement before the jury could render its liability verdict. Dan Klores Associates' insurer paid the entire settlement amount.

#### LUCIA CAIN

\$100,000 loss of services

#### INSURER(S)

Travelers for Edwin Amaro and Dan Klores Associates Inc.

#### PLAINTIFF

#### EXPERT(S)

Andrew Gluck, Ph.D., economic analysis, New York, NY (would have testified)  
Dr. Sidney M. Cohen, M.D., neurology, New York, NY (would have testified)  
John Tulenko, M.D., plastic & reconstructive surgery, New York, NY (would have testified)  
Leonard Harrison, M.D., orthopedic surgery, New York, NY (would have testified)  
Roland Parker, M.D., neuropsychology, New York, NY (would have testified)

#### DEFENSE

#### EXPERT(S)

William B. Head Jr., neuropsychiatry, Staten Island, NY (would have testified)  
Philip G. Taylor, M.D., orthopedic surgery, Brooklyn, NY (would have testified)

**EDITOR'S NOTE** The defense attorney did not contribute to this report.

—Amy Bourne